100TH CONGRESS
1st Session

SENATE

TREATY DOC.
100-8

TREATY WITH THE UNITED KINGDOM CONCERNING THE CAYMAN ISLANDS RELATING TO MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING THE CAYMAN ISLANDS RELATING TO MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, WITH PROTOCOL, SIGNED AT GRAND CAYMAN, CAYMAN ISLANDS ON JULY 3, 1986, TOGETHER WITH RELATED NOTES EXCHANGED AT LONDON THE SAME DAY

AUGUST 4, 1987.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

U.S. GOVERNME... PRINTING OFFICE

91-118 WASHINGTON : 1987

S385-8

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 4, 1987.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland concerning the Cayman Islands relating to Mutual Legal Assistance in Criminal Matters, with protocol, signed at Grand Cayman on July 3, 1986, and related notes. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty concerning the Cayman Islands provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) executing requests relating to criminal matters by undertaking diligent efforts, including the necessary administrative or judicial action (e.g., for the issuance of subpoenas and search warrants), without cost to the Requesting Party; (2) taking of testimony or statements of persons by noncompulsory or compulsory measures; (3) effecting the production, preservation, and authentication of documents, records or articles of evidence; (4) providing assistance to each other in proceedings for forfeiture or restitution of proceeds of an offense or for imposing fines; (5) serving judicial documents, writs, summonses, records of judicial verdicts, and court judgments or decisions; (6) effecting the appearance of a witness before a court of the Requesting Party; (7) locating persons; and (8) providing judicial records, evidence, and information.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, July 23, 1987.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland concerning the Cayman Islands relating to Mutual Legal Assistance in Criminal Matters, with protocol, signed at Grand Cayman, Cayman Islands on July 3, 1986, together with related notes exchanged at London the same day. I recommend that the treaty be transmitted to the Senate for its advice and consent to ratification.

The treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have been concluded and have entered into force with Italy, the Netherlands, Switzerland and Turkey, and have been signed with Canada, Colombia, Morocco and Thailand. All these agreements are part of a highly successful effort to modernize the legal tools available to law enforcement authorities in need of foreign evidence for use in criminal cases. This particular treaty represents a major breakthrough in United States efforts to enlist the cooperation of Caribbean "bank secrecy" jurisdictions in the investigation and prosecution of transborder crime. The treaty contains many provisions similar to those in the other treaties as well as some innovations.

The treaty will not require implementing legislation, and will utilize existing authority of the Federal courts, particularly 28 U.S.C. 1782.

Article 1 provides for assistance in all matters involving "the investigation, prosecution, and suppression of criminal offenses". The treaty thereby permits mutual assistance at the investigative stage (such as grand jury proceedings), as well as after formal charges have been filed. It also provides for assistance in civil and administrative proceedings relating to narcotics trafficking. The treaty provides solely for government-to-government mutual assistance, and thus is not intended to create rights in private persons either to gather evidence or secure other assistance or to suppress or exclude in civil or criminal proceedings evidence obtained under the treaty.

Article 2 provides for a Central Authority in each State who is responsible for transmitting, receiving and handling requests under the treaty on behalf of Federal and State agencies, courts and other authorities in that State. The Central Authorities are, respectively, the Attorney General of the United States and the Cayman Mutal Legal Assistance Authority, which under Cayman Islands

law is constituted by their Chief Justice, acting alone in an administrative capacity.

Article 3 permits the denial of assistance with respect to classes of cases, including most notably, offenses not punishable by more than one year of imprisonment and matters relating directly or indirectly to the regulation of taxes. The bar to assistance in tax matters is subject to exceptions for narcotics trafficking, covered by Article 19(3)(c), and tax fraud (e.g. fraudulent promotion of tax shelters and certain offenses in connection with illegally obtained income) for which assistance may be requested under Articles 19(3)(d) and (e) as discussed below. Other bases for denying requests include when the request fails to conform to the treaty (e.g. does not set forth the required information); relates to political or military crimes not constituting offenses under ordinary criminal law; does not establish "reasonable ground", i.e., a precise, rational explanation, for believing both that the specified offense has been committed and that the requested information is in the territory of the Requested Party; or where execution of the request would be contrary to the Requested Party's "public interest", a phrase which the Parties intend to construe narrowly. Instead of denying a request, Requested Party may make execution subject to the Requesting Party's acceptance of appropriate conditions.

Article 4 provides that written requests in an agreed-to standard format must necessarily include specific information and should also include certain other information "to the extent necessary and possible".

Article 5 obligates the Parties promptly to undertake diligent efforts to execute a request, by, inter alia, arranging without cost to the Requesting Party for any necessary administrative or judicial action, including the issuance by its courts of subpoenas, search warrants, or other orders. This provision for reciprocal legal representation should be a significant advance in international legal cooperation since the cost of retaining counsel abroad to present and process letters rogatory has sometimes been quite high. In the United States, it is anticipated that most requests will be transmitted to federal investigators, prosecutors, or judicial authorities for execution, and, that when compulsory process is required, the Department of Justice would ask a federal court to issue the necessary process under 28 U.S.C. Section 1782, and the treaty. This article also provides, inter alia, for requests to be executed strictly in accordance with the law of the Requested Party. It is stipulated, however, that the method of execution specified in a request should be followed if possible, since those methods may be designed by the Requesting Party to ensure the admissibility of the evidence collected at trial in its country or to enhance the utility of the evidence for specific purposes (e.g., to improve the scientific accuracy of forensic tests). Provision is also made for postponing or making execution subject to conditions where execution would otherwise interfere with an ongoing investigation or legal proceeding in the Requested Party, and for informing the Requested Party of the outcome of execution or of the reasons for denial.

Article 6 provides that the Requesting Party shall reimburse the Requested Party for only those costs specified; otherwise the latter assumes the expenses incurred in executing a request. The costs

specified include travel expenses for witnesses agreeing to appear voluntarily in the Requesting Party, which are provided in order to ensure for Caymans witnesses treatment similar to that accorded a person subpoenaed within the United States, and other extraordinary fees which the Requesting Party is typically asked to pay. The only additional cost to the Requesting Party which has not been included in other U.S. mutual legal assistance treaties (MLATs) is the reasonable costs of providing to the Requesting Party's Central Authority documents or records specified in the request, e.g., costs similar to those incurred when subpoenas are issued in the U.S. for comparable evidence, including bank or business records. This provision neither obligates nor prevents the Requesting Party from providing additional funds for witnesses who may be somehow involved in the investigation where it wishes to assist the individual with the costs of legal representation.

Article 7 restricts the use of any information or evidence obtained under the treaty to investigations, prosecution or suppression of criminal offenses stated in the request, absent prior consent of the Requested Party to other uses. Such other uses include inquiries, examinations, audits, efforts to identify targets, or use in any prosecutions or proceedings other than that for which assistance was granted. Unlike other MLATs which impose conditions of confidentiality only when necessary, this treaty provides that all information or evidence furnished under the treaty shall be treated as confidential except when disclosure is necessary for purposes of prosecution of an offense described in the request. Unlike some U.S. MLATs, this treaty imposes certain restrictions on additional uses of such information or evidence even after the information or evidence has been made public in a proceeding forming part of a prosecution.

Article 8 provides that the Requested Party may compel the taking of testimony or production of documents for the Requesting Party by means (e.g. subpoenas) available under, and in accordance with, the Requested Party's laws. The Requested Party shall notify the Requesting Party of any claim of immunity, incapacity or privilege asserted pursuant to the Requesting Party's law by an individual giving evidence, in order that the Requesting Party may determine its applicability. The article also makes provision to enable interested parties to be present during the taking of evidence and for authentication of unofficial documentary evidence in a form which complies with United States law.

Article 9 ensures that pursuant to a request, the Requested Party shall provide copies of its publicly available government records and may, in its discretion, provide any record or information in the possession of its government departments or agencies but not publicly available to the same extent and under the same conditions as such records or information would be made available to its own law enforcement and judicial authorities. The form and procedures specified for authenticating official records satisfy the requirements of United States law (Rule 902(3) of the Federal Rules of Evidence).

Article 10 provides that the Requested Party shall invite, but not compel, witnesses located in its territory to appear in the Requesting State.

The Requesting State shall pay the expenses of such voluntary appearance in accordance with Article 4(3)(g). The article also ensures such witness' "safe conduct" while the witness is present in the Requesting State. This phrase encompasses immunity from service of civil process, detention or any restriction of personal liberty with regard to acts or convictions which preceded the witness' departure from the Requested State while the witness is present in the Requesting State and for up to ten days after presence in the Requesting State is no longer required.

Article 11 authorizes the transfer of a person in custody in either Party to the other for purposes of providing testimony or where such person's presence is needed, subject to the consent of such person and the relevant Party or Parties. Authority is also provided to keep such person in custody unless release is authorized by the Sending State.

Article 12 is a standard MLAT provision which requires the Requested Party to take all necessary steps to locate or identify persons (e.g. witnesses, potential defendants, or experts) who are believed to be in its territory and are needed in connection with the investigation, prosecution and suppression of a criminal offense in the Requesting Party.

Article 13 obligates the Requested Party to arrange for the service of any document (e.g. summons, complaints or other legal documents) relating to a request for assistance, but leaves it to that Party's discretion to serve a subpoena or other process requiring the attendance of a person before any authority or tribunal in the Requesting Party. The Requesting Party must transmit a document inviting the appearance of a person in the Requesting Party a reasonable time before the scheduled appearance.

Article 14 provides that a request involving the search, seizure and delivery of an article shall be carried out if the Requesting Party provides justification for such action under the laws of the Requested State. In the United States, a Caymans request would have to be supported by showing that probable cause for the search exists, and in the Caymans, the United States request would have to demonstrate compliance with the Caymans' corresponding evidentary standard. The article also provides procedures for certifying to the continuity of custody and the condition of a seized article, and enables the Requested Party to stipulate terms and conditions for the transfer of the item in order to protect third party interests.

Article 15 provides for the return of documents or articles furnished in executing a request as soon as possible, absent a waiver of this requirement by the Requested Party. Unless original records of articles of particular significance are provided, the Requested Party may be expected routinely to exercise its discretion to provide such a waiver.

Article 16 stipulates that a Party may notify the other of proceeds of a criminal offense believed to be in the territory of the other Party, in order that the Parties shall, to the extent permitted by their law, assist each other in proceedings regarding forfeiture or restitution of proceeds of an offense, or the collection of fines imposed as a sentence for an offense. It is contemplated that proceeds, which would include money, vessels or other valuables used in per-

petrating the crime or acquired as a result of the crime, may be seized in aid of prosecution, or be subject to a temporary restraining order to assist in a civil action for return of the assets, or to some comparable action. The provision for assistance in forfeiture proceedings expressly authorizes assistance in an area in which countries do not necessarily otherwise assist each other—in execution of their penal laws. It is also consistent with a recently enacted U.S. legislative provision which applies, to the extent provided by treaty, to permit equitable sharing of forfeited property with a foreign government in order to reflect that government's contribution in narcotics investigations leading to seizure or forfeiture.

Article 17 provides that this treaty does not preclude either Party from utilizing other relevant international agreements or arrangements (e.g. Interpol), which may offer means of securing assistance or cooperation. Unless such other agreement or arrangement specifically applies, however, a Party must seek assistance under the treaty for cases falling within its coverage. The third paragraph addresses a particular Caymans and British concern for respecting Caymans bank secrecy laws by providing that unilateral compulsory measures (e.g. grand jury and trial subpoenas) for the production of documents in the territory of the other Party not be enforced in the first instance. The last paragraph relieves a Party from the obligation not to use such measures (subject to certain timing conditions), where either denial of a request or an unreasonable delay in execution of a request may be jeopardizing the successful completion of an investigation, prosecution or other proceeding. The article does not, however, cover administrative summonses of agencies such as the Internal Revenue Service or the Securities and Exchange Commission, so long as the matter being investigated does not constitute a criminal offense under the treaty. Neither does it preclude issuance of a subpoena or material witness warrant for any persons temporarily in the United States, even though the disclosure of information protected by Caymans secrecy laws may be required.

Article 18 encourages the parties to consult periodically to maximize use made of the treaty and specifically to apprise each other of the status and disposition of proceedings using evidence obtained under the treaty. The article also permits the Central Authorities to solicit the assistance of their diplomatic and political authorities to resolve difficulties arising in the course of implementing the treaty provisions.

Article 19 sets forth certain necessary definitions. The first two paragraphs distinguish between "the Contracting Parties"—the United States and the United Kingdom—and "the Parties"—the United States and the Cayman Islands. This reflects the Caymans status as a dependent territory of the United Kingdom which must undertake international obligations on behalf of the Caymans. The third paragraph defines "criminal offense" as including any conduct punishable by more than one year's imprisonment in both Parties, or racketeering, drug trafficking, failing to report transfers of illegally acquired money, fraud in connection with tax shelters, tax evasion or other offenses involving income obtained in illegal activities, failing to report transfers of illegally acquired funds, insider securities practices (including insider trading), violations of

the Foreign Corrupt Practices Act or participation in any of these crimes. The treaty also permits the Parties to add other offenses to this list by exchange of diplomatic notes.

Article 20 sets forth standard procedures for ratification, entry into force of the treaty and for termination on three months' written notice.

The Protocol provides that the terms of the treaty may be made applicable, in whole or in part, to certain other British dependencies in the Caribbean by exchange of notes between the United States and the United Kingdom. This will permit the other jurisdictions, as they become ready, to enter a treaty relationship with the United States for mutual legal assistance, but will avoid the need for the United States and the United Kingdom to conclude separate treaties with respect to each dependency.

The United States Delegation, consisting of representatives from the Departments of Justice and State, has also prepared a Technical Section-by-Section Analysis of the Treaty. That Analysis will be transmitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in favoring approval of this treaty by the Senate at an early date.

Respectfully submitted,

GEORGE P. SHULTZ.

Treaty Between the United States of America and the United Kingdom of Great Britain and Northern Ireland Concerning the Cayman Islands Relating to Mutual Legal Assistance in Criminal Matters

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the Cayman Islands;

Desiring to improve the effectiveness of the law enforcement authorities of both the United States of America and the Cayman Islands in the investigation, prosecution, and suppression of crime through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Article 1

SCOPE OF ASSISTANCE

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, for the investigation, prosecution, and suppression of criminal offenses of the nature and in the circumstances set out in this Treaty, including the civil and administrative proceedings referred to in paragraph 3(c) of Article 19.

2. For the purposes of paragraph 1, assistance shall include:

(a) taking the testimony or statements of persons;

(b) providing documents, records, and articles of evidence;

(c) serving documents;

(d) locating persons;

(e) transferring persons in custody for testimony;

(f) executing requests for searches and seizures;

(g) immobilizing criminally obtained assets;

(h) assistance in proceedings related to forfeiture, restitution and collection of fines; and

(i) any other steps deemed appropriate by both Central Authorities.

3. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

CENTRAL AUTHORITIES

1. A Central Authority shall be established by each Party.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by him. For the Cayman Islands, the Central Authority shall be the Cayman Mutual Legal Assistance Authority or a person designated by it.

3. Requests under this Treaty shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

ARTICLE 3

LIMITATIONS ON ASSISTANCE

1. The assistance afforded by this Treaty shall not extend to:

(a) any matter which relates directly or indirectly to the regulation, including the imposition, calculation, and collection, of taxes, except for any matter falling within sub-paragraphs 3(d) and 3(e) of Article 19; or

(b) any conduct not punishable by imprisonment of more than one year.

2. The Central Authority of the Requested Party may deny assistance where:

(a) the request is not made in conformity with the provisions of this Treaty;

(b) the request relates to a political offense or to an offense under military law which would not be an offense under ordinary criminal law; or

(c) the request does not establish that there are reasonable grounds for believing:

(i) that the criminal offense specified in the request has been committed; and

(ii) that the information sought relates to the offense and is located in the territory of the Requested Party.

3. The Central Authority shall deny assistance where the Attorney General of the Requested Party has issued a certificate to the effect that the execution of the request is contrary to the public interest of the Requested Party.

4. Before denying assistance pursuant to this Article the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

ARTICLE 4

FORM AND CONTENTS OF REQUESTS

1. Requests shall be submitted in writing by the Central Authority of the Requesting Party in such form as may from time to time be agreed between the Central Authorities.

2. The request shall include the following:

(a) the name of the authority conducting the investigation or proceeding to which the request relates;

(b) the subject matter and nature of the investigation or proceeding for the purposes of which the request is made and in particular the criminal offense or offenses for the investigation, prosecution or suppression of which the assistance is requested;

(c) information concerning the persons involved including, where available, their full names, dates of birth, and addresses;

(d) the information relied upon in support of the request;

(e) a description of the evidence, information or other assistance sought; such description shall specify where possible the time period to which any such evidence or information relates;

(f) the purpose for which the evidence or information or other assistance is sought; and

(g) the identity and presumed location, where known, of any person from whom evidence is sought.

3. To the extent necessary and possible, a request shall also include:

(a) the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(b) available information on the identity and whereabouts of a person to be located;

(c) a precise description of the place or person to be searched and of the articles to be seized;

(d) a description of the manner in which any testimony or statement is to be taken and recorded;

(e) a list of questions to be asked of a witness;

(f) a description of any particular procedure to be followed in executing the request;

(g) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled; and

(h) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.

ARTICLE 5

EXECUTION OF REQUESTS

1. The Central Authority of the Requested Party shall promptly execute any request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested Party shall do everything in their power to execute the request. The Courts of the Requested Party shall have jurisdiction to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by the persons designated by the Central Authority of the Requested Party.

3. Requests shall be executed in accordance with the laws of the Requested Party except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested Party.

4. If execution of the request would interfere with an ongoing criminal investigation or proceeding in the territory of the Requested Party, the Central Authority of that Party may postpone execution or make execution subject to conditions determined necessary after consultations with the Requesting Party. If the Re-

questing Party accepts the assistance subject to the conditions it shall comply with the conditions.

5. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons for the denial.

ARTICLE 6

COSTS

1. The following expenses, and none other, incurred in executing a request shall be reimbursed by the Requesting Party upon application of the Central Authority of the Requested Party:

(a) travel expenses of a witness presenting testimony in the territory of the Requesting Party;

(b) fees of expert witnesses retained with the approval of the Central Authority of the Requesting Party;

(c) fees of counsel appointed or retained with the approval of the Central Authority of the Requesting Party for a witness giving testimony;

(d) reasonable costs of locating, reproducing, and transporting to the Central Authority of the Requesting Party documents or records specified in a request;

(e) costs of stenographic reports requested by the Central Authority of the Requesting Party, other than reports prepared by a salaried government employee; and

(f) reasonable costs of interpreters or translators.

2. A witness who appears in the territory of the Requesting Party pursuant to Article 10 shall be entitled to the same fees and allowances ordinarily accorded to a witness in the territory of the Requesting Party.

3. A witness who appears in the territory of the Requested Party pursuant to Article 8 shall be entitled to such fees and allowances as shall be agreed between the Central Authorities.

ARTICLE 7

LIMITATIONS ON USE

1. The Requesting Party shall not use any information or evidence obtained under this Treaty for any purposes other than for the investigation, prosecution or suppression in the territory of the Requesting Party of those criminal offenses stated in the request without the prior consent of the Requested Party.

2. Unless otherwise agreed by both Central Authorities, information or evidence furnished under this Treaty shall be kept confidential, except to the extent that the information or evidence is needed for investigations or proceedings forming part of the prosecution of a criminal offense described in the request.

3. The Central Authority of the Requesting Party may request that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaking confidentiality, the Central Authority of the Requested Party shall so inform the Cen-

tral Authority of the Requesting Party which shall then determine whether the request should nevertheless be executed.

4. Except as may be permitted under paragraph 1, any information or evidence obtained under this Treaty which has been made public in the territory of the Requesting Party in a proceeding forming part of the prosecution of a criminal offense described in the request may be used only for the following additional purposes:

(a) where a trial results in a conviction for any criminal offense within the scope of this Treaty, for any purpose against the person(s) convicted;

(b) whether or not a trial results in the conviction of any person, in the prosecution of any person for any criminal offense within the scope of this Treaty; and

(c) in civil or administrative proceedings, only if and to the extent that such proceedings relate to:

(i) the recovery of the unlawful proceeds of a criminal offense within the scope of this Treaty from a person who has knowingly received them;

(ii) the collection of tax or enforcement of tax penalties resulting from the knowing receipt of the unlawful proceeds of a criminal offense within the scope of this Treaty; or

(iii) the recovery in rem of the unlawful proceeds or instrumentalities of a criminal offense within the scope of this Treaty.

ARTICLE 8

TAKING TESTIMONY AND PRODUCING EVIDENCE IN THE TERRITORY OF THE REQUESTED PARTY

1. A person requested to testify or to produce documentary information or articles in the territory of the Requested Party may be compelled to do so in accordance with the requirements of the law of the Requested Party.

2. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the evidence shall nonetheless be taken and the claim made known to the Requesting Party for resolution by the authorities of that Party.

3. The Requesting Party shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.

4. The Requested Party shall authorize the presence of such persons as are specified in the request during the taking of any evidence in the territory of the Requested Party and shall allow persons designated in the request to question the person whose testimony or evidence is being taken.

5. Documentary information other than official records produced in the territory of the Requested Party pursuant to this Article shall be authenticated by the attestation of a person competent to do so in the manner indicated in Form A appended to this Treaty.

ARTICLE 9

PROVIDING RECORDS OF GOVERNMENT AGENCIES

1. The Requested Party shall provide the Requesting Party with copies of publicly available records of government departments and agencies in the territory of the Requested Party.

2. The Requested Party may provide copies of any record or information in the possession of a government department or agency in the territory of that Party but not publicly available to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities.

3. Official records produced pursuant to this Article shall be authenticated by the attestation of an authorized person in the manner in Form B appended to this Treaty. The attestation shall be signed by, and state the official position of, the attesting person, and the seal of the authority executing the request shall be affixed thereto. Authentication of official records shall be carried out under the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, dated 5 October 1961.

ARTICLE 10

APPEARANCE IN THE TERRITORY OF THE REQUESTING PARTY

1. When the appearance of a person who is in the territory of the Requested Party is needed in the territory of the Requesting Party for the purpose of the execution of a request under this Treaty, the Central Authority of the Requesting Party may request that the Central Authority of the other party invite the person to appear before the appropriate authority in the territory of the Requesting Party. The response of the person shall be communicated promptly to the Central Authority of the Requesting Party. Such a person shall be under no compulsion to accept such an invitation.

2. A person appearing in the territory of the Requesting Party pursuant to this Article shall not be subject to service of process or be detained or subjected to any restriction of personal liberty by reason of any acts or convictions in either the territory of the Requesting or Requested Party which preceded his departure from the territory of the Requested Party.

3. The safe conduct provided for by this Article shall cease ten days after the person has been notified in writing by the appropriate authorities that his presence is no longer required, or if the person has left the territory of the Requesting Party and voluntarily returned to it.

ARTICLE 11

TRANSFERRING PERSONS IN CUSTODY FOR TESTIMONIAL PURPOSES

1. A person in the custody of the Requested Party who is needed as a witness in connection with the execution of a request in the territory of the Requesting Party shall be transported to the territory of that Party if the person and the Requested Party consent.

2. A person in the custody of the Requesting Party whose presence in the territory of the Requested Party is needed in connection with the execution of a request under this Treaty may be transported to the territory of the Requested Party if the person and both Parties consent.

3. For the purpose of this Article:

(a) the Receiving Party shall be responsible for the safety and health of the person transferred and have the authority and obligation to keep the person transferred in custody unless otherwise authorized by the Sending Party;

(b) the Receiving Party shall return the person transferred to the custody of the Sending Party as soon as circumstances permit or as otherwise agreed and in any event no later than the date upon which he would have been released from custody in the territory of the Sending Party; and

(c) the person transferred shall receive credit for service of the sentence imposed in the territory of the Sending Party for time served in the custody of the Receiving Party.

ARTICLE 12

LOCATION OF PERSONS

1. The Requested Party shall take all necessary measures to locate or identify persons who are believed to be in the territory of that Party and who are needed in connection with the investigation, prosecution or suppression of a criminal offense in the territory of the Requesting Party.

2. The Requested Party shall promptly communicate the results of its inquiries to the Requesting Party.

ARTICLE 13

SERVICE OF DOCUMENTS

1. The Requested Party shall effect service of any document relating to or forming part of any request for assistance properly made under the provisions of this Treaty transmitted to it for this purpose by the Requesting Party, provided that the Requested Party shall not be obliged to serve any subpoena or other process requiring the attendance of any person before any authority or tribunal in the territory of the Requesting party.

2. The Requesting Party shall transmit any such request for the service of a document inviting the appearance of a person before an authority in the territory of the Requesting Party to the Requested Party a reasonable time before the scheduled appearance.

3. The Requested Party shall return a proof of service in the manner specified in the request.

ARTICLE 14

SEARCH AND SEIZURE

1. A request for assistance pursuant to Article 1 involving the search, seizure and delivery of an article to the Requesting Party shall be executed if it includes the information justifying such action under the laws of the Requested Party.

2. Every official who has custody of a seized article shall certify the continuity of custody, the identity, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the territory of the Requesting Party as evidence of the truth of the matters set forth therein.

3. The Requested Party shall not be obliged to provide any item seized to the Requesting Party unless that Party has agreed to such terms and conditions as may be required by the Requested Party to protect third party interests in the item to be transferred.

ARTICLE 15

RETURN OF DOCUMENTS AND ARTICLES

The Requesting Party shall return any documents or articles furnished to it in the execution of a request under this Treaty as soon as possible unless the Requested Party waives the return of the documents or articles.

ARTICLE 16

PROCEEDS OF CRIME

1. The Central Authority of one Party may notify the Central Authority of the other Party when it has reason to believe that proceeds of a criminal offense are located in the territory of the other Party.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings related to:

(a) the forfeiture of the proceeds of criminal offenses;

(b) restitution to the victims of criminal offenses; and

(c) the collection of fines imposed as a sentence for a criminal offense.

ARTICLE 17

EXCLUSIVITY

1. Assistance and procedures set forth in this Treaty shall not prevent one Party from granting assistance to the other Party through the provisions of other international agreements or arrangements which may be applicable.

2. Subject to the terms of paragraph 1, a Party needing assistance as provided in Article 1 in the investigation, prosecution or suppression of a criminal offense as defined in Article 19 shall request assistance pursuant to this Treaty.

3. No Party shall enforce any compulsory measure, including a grand jury subpoena, for the production of documents located in the territory of the other Party with respect to any criminal offense within the scope of this Treaty, unless its obligations under the Treaty have first been fulfilled pursuant to paragraph 4 of this Article with respect to a request concerning those documents.

4. Where denial for a request or unreasonable delay in its execution may be jeopardizing the successful completion of an investigation, prosecution or other proceeding, the Central Authority of the Requesting Party shall so inform the Central Authority of the Requested Party in writing. Thereafter, either Contracting Party may

give at least 45 days' notice in writing to the other Contracting Party that, unless otherwise agreed, the Parties' obligations under this Article shall be deemed to have been fulfilled; provided that in no case shall the obligations under this Article be deemed to have been fulfilled sooner than 90 days after the date of receipt of the request for assistance.

ARTICLE 18

CONSULTATIONS

1. The Central Authorities will consult, at times mutually agreed by them, to enable the most effective use to be made of this Treaty. Such consultations shall include such information as may be lawfully disclosed concerning the status and disposition of proceedings utilizing documentary information and other evidence secured pursuant to this Treaty.

2. In any case of difficulty either Central Authority may request the assistance of the Contracting Parties to resolve the difficulty by way of consultation.

ARTICLE 19

DEFINITIONS

For the purpose of this Treaty:

1. "The Contracting Parties" means the Government of the United States and the Government of the United Kingdom.

2. "The Parties" means the Government of the United States and the Government of the Cayman Islands.

3. "Criminal offense" which, except in the case of any matter falling within sub-paragraphs (d) and (e) of this definition, does not include any conduct or matter which relates directly or indirectly to the regulation, imposition, calculation or collection of taxes, but subject always to those exclusions, means:

(a) Any conduct punishable by more than one year's imprisonment under the laws of both the Requesting and Requested Parties:

(b) "Racketeering" which means:

(i) the use or investment, directly or indirectly, knowingly by any person of any part of racketeering income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect commerce, including interstate or foreign commerce;

(ii) the acquisition or maintenance knowingly by any person through a pattern of racketeering activity or through collection of an unlawful debt, directly or indirectly, of any interest in or control of any enterprise which is engaged in, or the activities of which affect commerce, including interstate or foreign commerce; or

(iii) where any person is employed by or associated with any enterprise engaged in, or the activities of which affect commerce, including interstate or foreign commerce, the conduct or participation in the conduct, directly or indirectly, knowingly by that person of the affairs of the enter-

prise through a pattern of racketeering activity or collection of unlawful debt;
and in respect of which—

(A) "Racketeering income" means any income of any person derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal;

(B) "Racketeering activity" means unlawful gambling activity and the act or threat of any other criminal offense (which expression, for the avoidance of doubt, does not include any offense which relates directly or indirectly to the regulation including the imposition, calculation or collection of any tax) listed in this Article;

(C) "Pattern of racketeering activity" means at least two acts of racketeering activity, one of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(D) "Unlawful debt" means a debt:

(1) incurred or contracted in unlawful gambling activity or which is unenforceable in law in whole or in part as to principal or interest because of laws relating to usury; and

(2) which was incurred in connection with the business of gambling in violation of the law or the business of lending money or a thing of value at a rate usurious under law, where the usurious rate is at least twice the enforceable rate; and

(E) "Enterprise" includes any individual partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(*c*) "Narcotics trafficking" which means all offenses or ancillary civil or administrative proceedings taken by either of the Parties or their agencies connected with, arising from, related to, resulting from any narcotics activity covered by the Single Convention on Narcotic Drugs, 1961, or the Protocol Amending the Single Convention on Narcotics Drugs, 1961, or any other international agreements or arrangements binding upon both the Parties;

(*d*) Willfully or dishonestly obtaining money, property or valuable securities from other persons by means of false or fraudulent pretenses or statements, whether oral or written, regarding or affecting benefits available in connection with the laws and regulations relating to income or other taxes;

(*e*) Willfully or dishonestly making false statements whether oral or written, to government tax authorities (e.g., willfully or dishonestly submitting a false income tax return) with respect to any tax matter arising from the unlawful proceeds of any criminal offense covered by any other provision of this definition, except sub-paragraph (*f*), or willfully or dishonestly failing to make a report to government tax authorities as required

by law in respect of, or to pay the tax due on, any such unlawful proceeds;

(*f*) Willfully or dishonestly failing to make to the Government a report which is required by law to be made to it in respect of an international transfer of currency or other financial transactions connected with, arising from or related to the unlawful proceeds of any criminal offense falling within any provision of this Article, except this sub-paragraph or sub-paragraph (*e*) above;

(*g*) "Insider trading" which means the offer, purchase, or sale of securities by any person while in possession of material non-public information directly or indirectly relating to the securities offered, purchased, or sold, in breach of a legally binding duty of trust or confidence;

(*h*) Fraudulent securities practices, which means the use by any person willfully or dishonestly of any means, directly or indirectly, in connection with the offer, purchase or sale of any security:

(i) to employ any device, scheme, or artifice to defraud;

(ii) dishonestly to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; or

(iii) dishonestly to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(*i*) "Foreign corrupt practices" which means the corrupt offering, paying, or making of inducements by any person to any foreign official or foreign political party, official thereof or candidate for foreign official office in order to assist such person in obtaining or retaining business for himself or in directing business to any other person;

(*j*) Any of the above defined criminal offenses, where United States federal jurisdiction is based upon interstate transport, use of the mails, telecommunications or other interstate facilities;

(*k*) Such further offenses as may from time to time be agreed upon by exchange of diplomatic notes between the United States and the United Kingdom, including the Cayman Islands; and

(*l*) Any attempt or conspiracy to commit, or participation as accessory after the fact to, any of the above defined criminal offenses.

ARTICLE 20

RATIFICATION, ENTRY INTO FORCE, AND TERMINATION

1. This Treaty shall be ratified, and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force upon the exchange of instruments of ratification.

3. The Government of either the United States or the United Kingdom, including the Cayman Islands, may terminate this

Treaty by giving three months' notice in writing to the other Government at any time.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Grand Cayman, Cayman Islands this third day of July, 1986.

For the Government of the United States of America:

Ronald I. Spiers

For the Government of the United Kingdom of Great Britain and Northern Ireland:

Tim Eggar

For the Government of the Cayman Islands:

Peter Lloyd

FORM A

Affidavit With Respect to Documents of a Regularly Conducted Business Activity

Note: Affidavit must be executed by custodian of records or such other person who can explain the record keeping procedure.

I ..... (Swear) (Affirm) (On Penalty of Perjury) (On My Oath) as follows:

(1) I am employed by .....
.....
(Name of business, activity, or person from whom documents are sought.)

(2) .....
(Name of business, activity, or person from whom documents are sought.)
engages in the regular business of .....
.....
(Describe business or activity.)

(3) My official title is .....

(4) My duties and responsibilities include: (describe relationship to books and records, i.e., custodian of books and records, or supervision over books and records, etc.).

(5) As a result of my duties and responsibilities I have knowledge of the manner in which the books ands records are kept.

(6) The attached documents are original (or true copies of original) documents which I obtained from the custody and control of .....
.....
(Name of business, activity, or person from which documents are sought.)

(7) The attached documents are: .....
.....
.....
(Description of documents: e.g., " Ledger of the checking account of John Doe for the Month of July, 1986 ".)

(8) It is a regular practice of this business to make and keep .....
.....
(Description of documents.)
in the following manner .....
(Describe manner in which documents or categories of documents are made and kept.)

(9) It is the regular practice of the business to base its records upon information transmitted by a person with knowledge of the matters recorded, who is acting in the course of the regularly conducted business activity.

(10) It is the regular practice of the business to check the correctness of documents of the kind attached hereto.

(11) It is the regular practice of the business to rely on records of the kind attached hereto

(12) The entries on the documents attached hereto were made by persons with knowledge of the matters recorded, or from information transmitted by persons with such knowledge.

(13) The persons making the entries on the documents or transmitting the information for purposes of recording it were acting in the course of the regularly conducted business or activity.

(14) The entries on these documents were made at or near the time of the matters recorded, pursuant to a systematic and routine procedure for the conduct of the business.

(15) The documents attached hereto were kept in the course of the regular activity of this business.

....

(Date) (Signature)

Sworn or Affirmed before me a .....

(notary public, judicial officer, etc.)

this.....day of.....19.....

FORM B

Attestation of Authenticity of Official Records

I, ..., attest that my position with the Government of .....
(the United States the United Kingdom Cayman Islands)
is ..... and that in that
(Official Title)
position I am authorized by the law of .....
(the United States the United Kingdom Cayman Islands)
..... to attest that the documents attached hereto and described below:

(1) Are true copies of original official records which are authorized by the law of .....
.....
(the United States/the United Kingdom/Cayman Islands)
to be recorded or filed in .....
(Name of Public Office or Agency)
which is a public office or agency.

(2) Set forth matters which are required by the law of the .....
.....
(the United States/the United Kingdom/Cayman Islands)
to be recorded or filed and reported.

Description of Documents:

.....
(Signature)

.....
(Date)

PROTOCOL

Upon signing the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the Cayman Islands relating to Mutual Legal Assistance in Criminal Matters the Government further agreed that:

The terms of this Treaty may be made applicable in whole or in part, to Anguilla, the British Virgin Islands, Montserrat or the Turks and Caicos Islands by Exchange of Notes between the Governments of the United States and United Kingdom. Such Notes shall specify the central authority of the concerned jurisdiction for purposes of assistance under this Treaty.

This Protocol shall form an integral part of the Treaty.

EMBASSY OF THE UNITED STATES OF AMERICA.

No. 41.

The Embassy of the United States of America presents its compliments to the Foreign and Commonwealth Office and has the honor to refer to the Treaty Between the United States of America and the United Kingdom of Great Britain and Northern Ireland concerning the Cayman Islands Relating to Mutual Legal Assistance in Criminal Matters (hereinafter "the Treaty"), which is being signed this day at Grand Cayman, Cayman Islands by representatives of the Governments of the United States, the United Kingdom and the Cayman Islands.

In the spirit of cooperation, mutual respect and good will existing between the Government of the United States and the Government of the United Kingdom, including the Cayman Islands, concerning mutual legal assistance in criminal matters, the Embassy proposes that, in the interests of facilitating the cooperative use of the Treaty with respect to criminal offenses that fall within its scope and of avoiding measures that could result in a conflict between our respective laws, policies or national interests:

1. The Contracting Parties shall continue to exercise centralized control and carefully screen and evaluate matters that may involve potential areas of conflict and shall consult in good faith, at the instance of either Contracting Party, with respect to such areas.

2. Each Central Authority shall be free to invoke at any time assistance of the Contracting Parties for the purpose of resolving any differences that may arise in connection with the implementation or interpretation of Article 17 of the Treaty.

3. Even in those cases in which the Parties' obligations under Article 17 have been fulfilled with respect to a particular request, each Party shall continue to exercise moderation and restraint in considering the enforcement of unilateral measures to which the other objects for the production or withholding of evidence.

4. Each Central Authority undertakes to discuss with the other any case brought to its attention involving an exercise of jurisdiction with respect to criminal matters which may result in the production of evidence located in the territory of the other Party, with a view to resolving any differences in a mutually satisfactory manner.

It is understood that this Note and any reply do not create any legal obligations; nor do they create any rights on the part of a pri-

vate person to obtain, suppress, or exclude any evidence or to impede the execution of a request with respect to assistance that may be available under the Treaty.

The Embassy of the United States avails itself of this opportunity to renew to the Foreign and Commonwealth Office the assurances of its highest consideration.

EMBASSY OF THE UNITED STATES OF AMERICA, LONDON, *July 3, 1986.*

FOREIGN AND COMMONWEALTH OFFICE.

The Foreign and Commonwealth Office presents its compliments to the Embassy of the United States of America and has the honour to refer to the Embassy's Note of today's date which reads as follows:

"The Embassy of the United States of America presents its compliments to the Foreign and Commonwealth Office and has the honor to refer to the Treaty Between the United States of America and the United Kingdom of Great Britain and Northern Ireland Concerning the Cayman Islands Relating to Mutual Legal Assistance in Criminal Matters [hereinafter "the Treaty"], which is being signed this day at Grand Cayman, Cayman Islands by representatives of the Governments of the United States, the United Kingdom and the Cayman Islands.

In the spirit of cooperation, mutual respect and good will existing between the Government of the United States and the Government of the United Kingdom, including the Cayman Islands, concerning mutual legal assistance in criminal matters, the Embassy proposes that, in the interests of facilitating the cooperative use of the Treaty with respect to criminal offenses that fall within its scope and of avoiding measures that could result in a conflict between our respective laws, policies or national interests:

1. The Contracting Parties shall continue to exercise centralized control and carefully screen and evaluate matters that may involve potential areas of conflict and shall consult in good faith, at the instance of either Contracting Party, with respect to such areas.

2. Each Central Authority shall be free to invoke at any time assistance of the Contracting Parties for the purpose of resolving any differences that may arise in connection with the implementation or interpretation of Article 17 of the Treaty.

3. Even in those cases in which the Parties' obligations under Article 17 have been fulfilled with respect to a particular request, each Party shall continue to exercise moderation and restraint in considering the enforcement of unilateral measures to which the other objects for the production or withholding of evidence.

4. Each Central Authority undertakes to discuss with the other any case brought to his attention involving an exercise of jurisdiction with respect to criminal matters which may result in the production of evidence located in the territory of the other Party, with a view to resolving any differences in a mutually satisfactory manner.

It is understood that this Note and any reply do not create any legal obligations; nor do they create any rights on the part of a private person to obtain, suppress, or exclude any evidence or to

impede the execution of a request with respect to assistance that may be available under the Treaty.

The Embassy of the United States avails itself of this opportunity to renew to the Foreign and Commonwealth Office the assurances of its highest consideration."

The Foreign and Commonwealth Office confirms that the proposals set out in the Embassy's Note are acceptable to the Government of the United Kingdom and the Government of the Cayman Islands.

The Foreign and Commonwealth Office avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

FOREIGN AND COMMONWEALTH OFFICE, LONDON, *3 July 1986.*

○